Office Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No. 82-2130

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

JULIE FISHER,

Petitioner,

vs.

YVONNE LARSEN, W. DANIEL LARSEN, JOSEPH K. HARMON, EDWIN J. GRAY, THE COPLEY PRESS, INC., and MICHAEL SCOTT-BLAIR

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT

RESPONDENTS' BRIEF IN OPPOSITION

David E. Monahan
Counsel of Record
Marilyn L. Huff

GRAY, CARY, AMES & FRYE
2100 Union Bank Building
San Diego, California 92101
Telephone: (619) 699-2755

Attorneys for Respondents
The Copley Press, Inc. and
Michael Scott-Blair

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SUMMARY OF ARGUMENT

The Respondents, The COPLEY PRESS, INC. and MICHAEL SCOTT-BLAIR respectfully request that this Court deny the petitions for writ of certiorari, seeking review of the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division One, reported at 138 Cal.App.3d 627, 188 Cal.Rptr. 216 (1982).

REASONS WHY THE WRIT SHOULD BE DENIED

I

NEITHER THE DECISION BELOW NOR THE RECORD RAISES A CONFLICT WITH STATE OR FEDERAL CASES WARRANTING REVIEW BY THIS COURT.

A review by this Court on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons for granting the writ.

None are present in this case, which is only at the pretrial stage.

The opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division One, Fisher v. Larsen, 138 Cal.App.3d 627, 188 Cal.Rptr. 216 (1982) is not in conflict with a decision of another state court of last resort or of a federal court of appeals or with any decision of this Court. Rather, the decision and the record reflect that the appellate court properly applied this Court's holdings in New York Times v. Sullivan, 376 U.S. 254, 11 L.Ed. 686, 84 S.Ct. 710 (1964), Curtis Publishing Co. v. Butts, 388 U.S. 130, 18 L.Ed. 2d 1094, 87 S.Ct. 1975 (1967), St. Amant v. Thompson, 390 U.S. 727, 20 L.Ed. 2d 262, 88 S.Ct. 1323 (1968), and Gertz v. Robert Welch, Inc., 418 U.S. 323, 41 L.Ed. 2d 789, 94 S.Ct. 2997 (1974) that a public official in a defamation action must

prove actual malice by showing that the statement was made with actual knowledge that it was false or with reckless disregard of whether it was false and that FISHER failed to do so.

Additionally, the opinion below is consistent with settled case law in California and other state courts of last resort. Good Government Group of Seal Beach, Inc. v. Superior Court, 22 Cal.3d 672, 150 Cal.Rptr. 258 (1978); Desert Sun Publishing Co. v. Superior Court, 97 Cal.App.3d 49, 158 Cal.Rptr. 519 (1979); Scott v. McDonnell Douglas Corp., 37 Cal.App.3d 277, 112 Cal.Rptr. 609 (1974); Otero v. Ewing, 162 La. 453, 110 So. 648 (1926).

This case is consistent with numerous recent federal and state cases where summary judgments in public figure defamation cases have either been upheld on appeal or reversed for failure to

grant summary judgment. Medico v. Time, Inc., 643 F.2d 134 (3rd Cir. 1981), cert. denied 102 S.Ct. 139 (1981) [court affirmed summary judgment in favor of defendant news magazine which had published a summary of an FBI report identifying the plaintiff as a member of an organized crime family; court held that the plaintiff had failed to establish a genuine issue of fact concerning a possible abuse of the fair report privilege]; Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C. Cir. 1980), cert. denied, 449 U.S. 898 (1980) [court affirmed summary judgment in favor of defendant publisher whose article claimed that cooperative headed up by a public figure plaintiff had been losing money over the last year]; Porter v. Guam Publications, Inc., 643 F.2d 615 (9th Cir. 1981), cert. denied 102 S.Ct. 475 (1981) [court reversed a verdict in

favor of the plaintiff holding that summary judgment should have been granted for the defendant newspaper which had reported the contents of a daily police bulletin because the plaintiff had failed to present any real triable issue of fact]; Warren v. Herndon, 115 Cal.App.3d 141, 171 Cal.Rptr. 220 (1981) [court affirmed summary judgment for defendants].

Here, the petitions for certiorari fail to raise significant issues demonstrating an actual conflict in the federal courts of appeal or state courts of last resort requiring pretrial review by this Court of the case.[1]

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[1] If the Court grants review of the case, Respondents, THE COPLEY PRESS and MICHAEL SCOTT-BLAIR request that this Court reinstate the trial court order granting summary judgment to all defendants on the ground that FISHER failed to show a genuine issue of material fact that the defendants knew of the falsity of the material or acted with reckless disregard of the truth.

II

THIS CASE DOES NOT PRESENT ISSUES WHICH MUST BE SETTLED BY THIS COURT AT THIS TIME.

Petitioner JULIE FISHER, in pro per, is in essence urging this Court in the first Question Presented to abandon the New York Times v. Sullivan and Gertz rules long established by this Court and apply a negligence standard to reporting of political debate. Such a result is contrary to the First and Fourteenth Amendments to the United States Constitution which embody a "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open" expressed by this Court in New York Times v. Sullivan, 376 U.S. 254, 11 L.Ed. 686, 84 S.Ct. 710 (1964).

Petitioner FISHER's position that opinions are actionable is without merit

and does not justify review by this Court. Gertz v. Robert Welch, Inc., 418 U.S. 323 41 L.Ed.2d 789, 94 S.Ct. 2997 (1974); Gregory v. McDonnell Douglas Corp., 17 Cal.3d 596, 131 Cal.Rptr. 641 (1976).

Petitioner FISHER's second Question Presented is not supported by the record or the decision below. FISHER failed to state triable issues of material fact meeting the standard required for a public official in a defamation action. Accordingly, summary judgment was granted and demurrers to other causes of action were sustained by the court.

Petitioner FISHER's third Question Presented requests this Court to invalidate a State statute, California Civil Code § 48a, without any support in the record for such drastic action by this Court or reasoned basis requiring Supreme Court review. It is well-settled

that this Court will not pass on the constitutionality of an act of the State legislature where other grounds are available and disposition of the issues of the case. FISHER admits that the New York Times v. Sullivan rule requires her to show actual malice. Thus, it is unnecessary for this Court to even address the constitutionality of California Civil Code § 48a. NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78

S.Ct. 1163 (1958). Therefore, FISHER's petition must be denied.[2]

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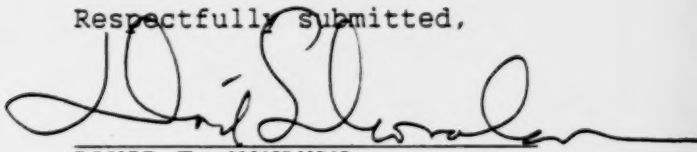
[2] A second petition has been brought by the Larsen defendants. Although Respondents sympathize with the Larsen defendants' position, Respondents do not agree that the writ should be granted as the petition fails to raise significant recurring constitutional issues requiring pretrial review by this Court. For example, the courts below applied the New York Times rule to the advantage of the nonmedia defendants. Thus, there is no need for this Court to decide the issue at this time when the Larsen defendants have not been adversely affected by the lower court ruling on this issue. However, if the Court grants review of the case, it should consider whether the order granting summary judgment to all defendants should be reinstated on the ground that FISHER failed to show a triable issue of material fact that defendants knew of falsity of statements or acted in reckless disregard of the truth. Respondents submit that they are entitled to summary judgment in their favor on all issues.

CONCLUSION

For these reasons, Respondents respectfully request the Court to deny the petitions.

DATED: July 22, 1983.

Respectfully submitted,



DAVID E. MONAHAN
Counsel of Record

MARILYN L. HUFF

GRAY, CARY, AMES & FRYE
2100 Union Bank
San Diego, California 92101

COUNSEL FOR RESPONDENTS
THE COPLEY PRESS, INC. and
MICHAEL SCOTT-BLAIR